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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945

No. [redacted] 36

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. HARICE LEROY CARTER,

Petitioner,

vs.

JOSEPH E. RAGEN, Warden Illinois State Penitentiary, Joliet, Illinois,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
Attorney for Respondent.

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Assistant Attorney General,
Of Counsel.

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No. 764

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vs.

JOSEPH E. RAGEN, Warden Illinois State Penitentiary, Joliet, Illinois,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

STATEMENT OF THE CASE.

The petitioner sued out a writ of error from the Supreme Court of Illinois to review his conviction of the crime of murder, which conviction followed his plea of guilty to that offense in the circuit court of Livingston County, Illinois.

He brought before the Supreme Court of Illinois only the common law record, which record, under the Illinois practice in criminal cases does not include a bill of exceptions or report of proceedings at the trial.

He complains that it does not appear that counsel was appointed to defend him before he entered his plea of guilty. He does make it appear, however, by a statement in his brief, that the court appointed "L. W. Tuesburg, a duly licensed and practicing attorney, and a member of the bar of the Court, to represent the defendant, Harice Leroy Carter, etc., on the question of mitigation or aggravation of said murder to which, as aforesaid, the defendant had plead guilty."

The common law record does not disclose that either the defendant or the counsel who was appointed to represent him before he was sentenced made any effort to withdraw the plea of guilty and submit the petitioner's fate to the hands of the jury, or as is permissible in the State of Illinois, if the state's attorney consents, to a trial by the court without a jury on a plea of not guilty.

The petitioner also sought, by statements *dehors* the record on review, to canvas the merits of his case; but the Supreme Court of Illinois refused, in accordance with the invariable practice of that and all other courts of review, to substitute the petitioner's assertions in his brief for a transcript of record embodied in a bill of exceptions or report of proceedings at the trial.

Questions Presented.

The only question presented is the question whether it fairly appears that petitioner was unconstitutionally denied the right of counsel.

ARGUMENT.

I.

The petitioner was not unconstitutionally denied the right counsel.

This case is indistinguishable, at least in any aspect favorable to the instant petitioner, from the case of *Canizio* v. *People of the State of New York*, 66 S. Ct. 452, 326 U. S. . . ., (not yet officially reported). In that case, as in the instant case, the petitioner entered a plea of guilty without counsel. But in that case, precisely as in this case, before sentence was imposed, counsel appeared for him. In that case, as in the instant case, neither the petitioner nor his counsel made any effort to withdraw the plea of guilty.

In that case, this court held that it would be inferred that petitioner's election to abide by his plea of guilty was an informed election, advisedly made, and represented a reasonable judgment as to what his best interests required.

In Illinois, upon plea of guilty, the judge must hear evidence in aggravation and mitigation; but upon a plea of not guilty, the penalty, which may be any years not less than 14, or which may be death by electrocution, is, in the event of conviction of murder, fixed by the jury. (Ill. Rev. Stats., 1945, Ch. 38, par. 801.) In many cases, it is the part of wisdom to plead guilty and submit to presumably more dispassionate sentence by the court.

Such features as differentiate *Canizio* v. *People*, cited above, from the instant case militate not in favor of but adversely to the present petitioner. In the *Canizio* case, the petitioner charged, by petition for New York's statutory *coram nobis*, matter *dehors* the record. He was only 19

years old and laid a foundation for the contention, to which four members of this court acceded in the dissenting opinion, that he was afraid to withdraw his plea of guilty after it had been entered, for fear that the plea would be entered as evidence again him in the nature of a confession. No such contention is intimated in the instant case.

If there were any facts *dehors* the record in the instant case, such as that petitioner importuned his counsel to withdraw his plea of guilty or that he was not fairly and adequately represented, petitioner could have made those facts apparent by a motion for a writ of error *coram nobis*. See *People* v. *Green*, 355 Ill. 468.

It may be suggested that since the court's order, if read literally and technically, appointed counsel only on the issue of aggravation and mitigation, it was not the duty of such counsel to consider or advise the petitioner as to his right to withdraw his plea of guilty and make the plea of self-defense that, by assertions in his brief, he intimates that he had. But certainly it cannot be presumed that a member of the bar, appointed to represent a man in a capital case, would not only undertake his assignment but would represent his client at a hearing which embodied the substance of a trial without advising him as to his right to withdraw his plea of guilty and substitute therefore his plea of not guilty.

The test is whether the action of the trial court shocks the universal sense of justice. Surely receiving a plea of guilty and then appointing counsel, instead of appointing counsel prior to arraignment, when the court may and ordinarily would, upon request, allow a withdrawal of the plea does not meet this test.

Conclusion.

For the reasons suggested in this brief, it is submitted that the writ of *certiorari* should be denied.

Respectfully submitted,

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Attorney for Respondent.

WILLIAM C. WINES,
Assistant Attorney General.
Of Counsel.